IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NORTH DAKOTA SOUTHWESTERN DIVISION

Pearl Reiss, individually and as surviving spouse of Henry Reiss,)		
deceased,)		
Plaintiff,)	ORDER	
VS.)		
Komatsu America Corp. and Diesel)		
Machinery, Inc.,)		
Defendant.)	Case No. 1:08-cv-082	

On September 30, 2010, the plaintiff, Pearl Reiss, filed a motion to substitute her daughter, Vonda Horner, as the named plaintiff in the above-entitled action. In support of her motion, Pearl Reiss has filed a Stipulation to Substitute Parties. Attached as exhibits to the stipulation are Waivers of Right to Pursue Wrongful Death Claim and Assignment of Survival claim executed by Pearl Reiss and Gregory Reiss, one of the decedent's two adult children, and an Acceptance of Waiver and Assignment executed by Vonda Horner, the decedent's other adult child.

N.D.C.C. § 32-21-03 provides the priority of persons who may bring a wrongful death action. Pearl Reiss is first in priority under the statute. However, she has now signed a wavier of her right to pursue a wrongful death action. The decedent's surviving children, Gregory Reiss and Vonda Horner, are second in the priory under the statute. Vonda Reiss has agreed to be substituted as named plaintiff in this action and Gregory Reiss has consented to her substitution as plaintiff.

The court **GRANTS** Pearl Reiss's motion (Docket No. 82) and **ORDERS** that Vonda Horner, individually and as a surviving child of Henry Reiss, deceased, be substituted for Pearl Reiss

as the named plaintiff in this action. As a practical consequence of her substitution as plaintiff,

Vonda Horner has authority pursuant to N.D.C.C. § 32-21-06 to compromise this action or the right

thereto, and such compromise shall be binding on all persons authorized to bring the action or to

share in the recovery.

Dated this 1st day of October, 2010.

/s/ Charles S. Miller, Jr.

Charles S. Miller, Jr.

United States Magistrate Judge

2